

United States District Court
for the
Western District of New York

In the Matter of the Search of

(Briefly describe the property to be searched or identify the person by name and address.)

Black Apple I-phone Model: A1778; FCC ID: BCG-E3091A; IC: 579C-E091A
(Subject Phone 1)

Case No. 18-MJ-1013

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See descriptions included in Exhibit A, attached and incorporated by reference.

located in the Western District of New York, there is now concealed (identify the person or describe the property to be seized):

The items set forth on the attached schedule of items to be seized, attached hereto as Exhibit B and incorporated by reference.

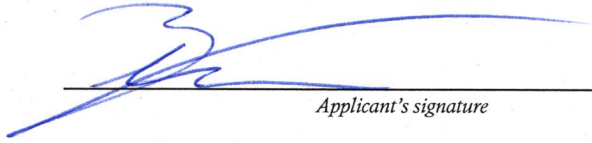
The basis for search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☒ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to violations of 21 U.S.C. §§ 841(a)(1), 843(b), 844(a), and 846

The application is based on these facts:

- ☒ continued on the attached sheet.
- ☐ Delayed notice of ____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

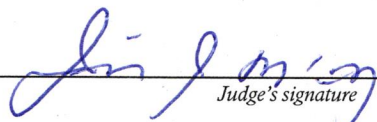

Applicant's signature

THOMAS V. WEIS
Special Agent
Federal Bureau Of Investigation

Printed name and title

Sworn to before me and signed in my presence.

Date: January 16, 2018


Judge's signature

HONORABLE JEREMIAH J. MCCARTHY
United States Magistrate Judge

Printed name and Title

City and state: Buffalo, New York

EXHIBIT A

DESCRIPTION OF SUBJECTS TO BE SEARCHED

SUBJECT PHONE 1

Black Apple I-phone Model: A1778; FCC ID: BCG-E3091A; IC: 579C-E091A



SCHEDULE OF ITEMS TO BE SEARCHED FOR AND SEIZED

Items comprising evidence of, or property designed for use, intended for use, or used in committing violations of Title 21, United States Code, Sections 841(a)(1), 843(b), 844(a) and 846, consisting of:

- a) Records of telephone calls, including incoming, outgoing, and missed calls, phone contact addresses, email addresses and telephone numbers in directories, documents and files which reflect names, email addresses, addresses, telephone numbers and objects related to drug trafficking of butyryl fenatnyl, and photographs regarding drug trafficking of butyryl fentanyl and drug trafficking associates contained in the cellular telephones;
- b) Text messages and emails contained in the cellular telephones related to drug trafficking of butyryl fentanyl and drug trafficking associates; and
- c) Records regarding the ownership and/or possession of the searched items.

EXHIBIT B

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

I, **Thomas V. Weis**, Special Agent of the Federal Bureau of Investigation, United States Department of Justice, having been duly sworn, states as follows:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI) of the United States Department of Justice. As such, I am an “investigative or law enforcement officer of the United States” within the meaning of 18 U.S.C. § 2510(7), that is, an officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in 18 U.S.C. § 2516.

2. I have served as an FBI Special Agent since March of 2017.¹ During that time, I have participated in investigations involving drug trafficking and organized crime matters, including to include narcotics investigations that utilized the court-authorized interception of wire and oral communications. In addition, I have had the opportunity to work with several other FBI agents and other law enforcement agents and officers of varying experience levels, who have also investigated drug trafficking networks, with regard to the manner in which controlled substances are obtained, diluted, packaged, distributed, sold and used within the

¹ I was also previously employed from 2014 to 2015 as a United States Secret Service Uniformed Officer under the Department of Homeland Security. From 2007 to 2014, I served as a United States Army Infantry officer.

framework of drug trafficking in the Western District of New York. As a result of my experience, I am familiar with how controlled substances are obtained, diluted, packaged, distributed, sold, and used in the framework of drug trafficking in the Western District of New York and how drug traffickers utilize wire communications to facilitate their illegal activities. My investigative experience detailed herein, and the experiences of other law enforcement agents, who are participating in this investigation, serve as the basis for the opinions and conclusions set forth herein.

3. Your Affiant states that this investigation was conducted by Special Agents of the FBI and other law enforcement personnel assigned to the FBI Buffalo Division - Safe Streets Task Force (FBI-SSTF).² Your Affiant is fully familiar with the facts and circumstances of this investigation, such familiarity having been gained through: your Affiant's personal knowledge based upon your Affiant's participation in this investigation; statements by and/or reports provided to your Affiant by law enforcement personnel of the FBI-SSTF, Erie County Sheriff's office (ECSO), Buffalo Police Department (BPD); federal court authorized wire communications interceptions, information provided by confidential sources; consensual recordings, controlled evidence purchases of illegal drugs, information learned through a review and analysis of pen register/detailed calling records (toll records) and subscriber information related to subjects of this investigation installed pursuant to court authorization, interviews of various individuals believed to be associated with subjects of the

² The SSTF is comprised of Agents and Investigators from the Bureau of Alcohol Tobacco and Firearms, Immigration and Customs Enforcement, Erie County Sheriff's Office, New York State Police, Amherst Police Department, Hamburg Police Department, Town of Tonawanda Police Department, the NFTA Police, U.S. Border Patrol, and the Buffalo Police Department.

investigation, physical surveillances, records checks of various public and law enforcement data bases, and other investigative techniques.

4. This affidavit is made in support of a federal search warrant application for the following cellular phone recovered during the arrest of **DONTRELL R. WISE** pursuant to the execution of a federal arrest warrant issued by Honorable Jeremiah J. McCarthy, United States Magistrate Judge: One (1) black Apple I-phone Model: A1778; FCC ID: BCG-E3091A; IC: 579C-E091A (**Subject Phone 1**)

5. As it is my purpose to obtain a search warrant for which only probable cause is required, I have not included each and every fact learned during the investigation to date. I have set forth only the facts that I believe are necessary to establish probable cause to believe that the Subject Telephone, described above, are evidence of, were used in committing, and/or contains evidence/fruits/instrumentalities of violations of: 21 U.S.C. § 841(a)(1) (possession with the intent to distribute, and to distribute, butyryl fentanyl, a Schedule I controlled substance); 21 U.S.C. § 843(b) (use of a communication facility in furtherance of a controlled substance felony); 21 U.S.C. § 844(a) (simple unlawful possession of butyryl fentanyl); and 21 U.S.C. § 846 (conspiracy to possess with the intent to distribute, and to distribute, butyryl fentanyl, a Schedule I controlled substance) (hereinafter, "Enumerated Offenses").

6. The information contained in this affidavit is based upon my participation and upon reports and information received from other law enforcement officers and agencies.

This affidavit is provided for the limited purposes of establishing probable cause to support the attached search warrant application and therefore does not contain each and every detail of the investigation.

PROBABLE CAUSE

7. Since late 2017, the FBI Buffalo Division Safe Streets Task Force (FBI-SSTF) has been conducting an investigation of the criminal activities of members and associates of the Black Soprano Family gang, a violent street gang which operates in the Delavan/Courtland Avenue area of Buffalo, New York.

8. On November 09, 2017, at approximately 11:40 p.m., while on routine patrol, Buffalo Police Department (BPD) officers conducted a vehicular traffic stop of a suspicious red Ford Explorer in the area of Erb Street in Buffalo, New York. The BPD officers detected the smell of marijuana as the Explorer passed by. The officers also noticed the Explorer was a rental vehicle, but appeared to have aftermarket window tint in violation of New York State vehicle and traffic law. Upon approaching the vehicle, BPD officers encountered two males in the Ford Explorer; the driver, **DONTRELL R. WISE** and passenger Jerrell D. Weathersby. The officers further detected the smell of marijuana coming from the vehicle, and asked the occupants if they were smoking marijuana. Weathersby stated that he had smoked marijuana, and that he had more of the drug in his left jacket pocket. Weathersby had previously been identified by the FBI-SSTF as an associate of the Black Soprano Family gang, a violent street gang which operates in the Delavan/Courtland Avenue area of Buffalo, New York. **WISE** had previously been identified by the FBI-SSTF as an associate of the

Newburgh Crew gang which operates in the Delavan/Newburgh Avenue area of Buffalo, New York. Weathersby was asked by the officers to exit the vehicle, where he was patted down for illegal contraband.

9. During the pat down of Weathersby, a clear bag of what was believed to be, at the time, powdered cocaine, was found by the BPD officers in Weathersby's right pant pocket. Weathersby stated to the BPD officers the bag contained morphine, which Weathersby claimed to be taking for a toothache. Ultimately, the contents of the bag were sent to the Erie County Central Police Services Forensic Laboratory (CPS Lab), which confirmed the substance was butyryl fentanyl. In Weathersby's left jacket pocket, a clear sandwich bag of white pills were identified by the officers as oxycodone and tramadol. A clear vial of marijuana was also recovered from Weathersby's left jacket pocket. Weathersby had two phones in his possession, which were put into evidence by BPD. Weathersby also had approximately \$1,000 in United States currency in his possession.

10. The butyryl fentanyl that was in Weathersby's immediate possession on November 9, 2017 weighed 5.47 grams. Given my observations of the quantity of butyryl fentanyl that was seized, and based on my training and experience, Weathersby and **WISE** possessed distribution quantity butyryl fentanyl. While the amount varies, approximately one tenth of a gram of butyryl fentanyl is mixed into cocaine or heroin. I estimate that they possessed approximately 60 doses of butyryl fentanyl. Based on my training and experience, your Affiant is aware that drug traffickers frequently have multiple cellular telephones.

11. **WISE** was also asked to exit the vehicle and was searched for contraband. **WISE** was noted to be in possession of a large amount of money. Buffalo Police officers estimated he possessed approximately \$6,000 in United States currency. **WISE** stated to the officers that the money was from working in a restaurant. According to **WISE**'s Pennsylvania Board of Probation and Parole Agent, **WISE** listed his employer as Engineered Plastics Incorporated, in Erie, Pennsylvania, where he works the second shift in the warehouse section of the company. Furthermore, **WISE**'s parole agent stated that **WISE** is not allowed into New York State without his approval or the approval of another parole agent. **WISE** was determined to be listed as an authorized driver on the rental agreement for the vehicle.

12. On or about November 11, 2017, in the area of West Ferry Avenue, the same two BPD officers conducted a traffic stop of a vehicle. **WISE** and Weathersby were in the vehicle, which was a different rental vehicle than the November 9, 2017 stop. This different rental vehicle also had an aftermarket window tint. This occurred on the same day that Weathersby was released from custody. Once again, the officers detected a strong odor of marijuana, and Weathersby admitted that he had been smoking. Both men were ordered out of the vehicle. The officers observed two large bulges in **WISE**'s front pant pockets. The officers were concerned about the bulges in **WISE**'s pocket, and they asked if **WISE** was in possession of a weapon. **WISE** responded the bulge was approximately eleven thousand dollars in U.S. currency in his pockets. Upon a pat down search, the BPD officers confirmed that the bulges were large bundle of U.S. currency. Based off my training and experiences, this is consistent with narcotics sales. Drug dealers often separate drugs and money between themselves in order to prevent the loss of both items in the case of an arrest or robbery.

13. A recent toll records check of **WISE's** cellular telephone number, 814-270-5847, from April 19, 2017 to May 23, 2017, revealed that **WISE** had calls to several known Black Soprano Family gang members. This phone number, not associated with **Subject Phone 1**, was the number provided by **WISE** to the Pennsylvania Board of Probation and Parole office. **WISE** had contacted one individual, who had been previously identified by the FBI-SSTF as an associate of both the Black Soprano Family gang and the Newburgh Crew gang, a total of six times within the stated time frame. Based on my training and experiences, and given the above described circumstances, it is my belief that **WISE's** contact with current Black Soprano Family and Newburgh Crew gang members is a result in his affiliation with the violent gangs.

14. On January 11, 2018, **WISE** was arrested pursuant to a federal arrest warrant issued by Honorable Jeremiah J. McCarthy, United States Magistrate Judge. During his arrest, **Subject Phone 1** was in his immediate possession. This cellular phone number was not known by **WISE's** parole agent, nor was it on file with the Pennsylvania Board of Probation and Parole office. Based on my training and experiences, I know that narcotics traffickers will use multiple cellular telephones in order to conduct their business, and often times will not provide specific cellular phone numbers with law enforcement in order to shield their dealings.

SUMMARY OF RELEVANT TECHNOLOGY

15. A cellular telephone or mobile telephone is a handheld wireless device used primarily for voice communication through radio signals. These telephones send signals through networks of transmitter/receivers called “cells”, enabling communication with other cellular telephones or traditional “land line” telephones. A cellular telephone usually includes a “call log”, which records the telephone number, date, and time of calls made to and from the phone.

16. In addition to enabling voice communications, cellular telephones offer a broad range of capabilities. These capabilities include, but are not limited to: storing names and phone numbers in electronic “address books”; sending, receiving, and storing text messages and email; taking, sending, receiving, and storing still photographs and moving video; storing and playing back audio files; storing dates, appointments, and other information on personal calendars; and accessing and downloading information from the Internet. Cellular telephones may also include global positioning system (“GPS”) technology for determining the location of the device. Based on your Affiant’s training and experience, and the information learned throughout this investigation, it is known that persons associated with drug trafficking organizations in general utilize the cellular telephones to communicate with others about the possession, transportation, and distribution of controlled substances, including butyryl fentanyl.

SEEKING AUTHORIZATION TO SEARCH AND SEIZE

17. Accordingly, the application seeks authorization to search for and seize all:

- a. Records of telephone calls, including incoming, outgoing, and missed calls, phone contact addresses, email addresses and telephone numbers in directories, documents and files which reflect names, email addresses, addresses, telephone numbers and objects related to drug trafficking, and photographs regarding drug trafficking and drug trafficking associates contained in the cellular telephones;
- b. Text messages and emails contained in the cellular telephones related to drug trafficking and drug trafficking associates; and
- c. Records regarding the ownership and/or possession of the searched items.

18. Based on my training, my experience, my participation in other narcotics investigations, my participation in this investigation, and my discussions with other experienced law enforcement personnel, I have learned that significant narcotics traffickers such as dealers in butyryl fentanyl and other controlled substances frequently maintain, in portable mobile communication and storage devices, addresses, email addresses and telephone numbers in directories, documents and files which reflect names, email addresses, addresses, telephone numbers, and objects related to drug trafficking, and photographs regarding drug trafficking and drug trafficking associates contained in the cellular telephones.

19. Based on your Affiant's experience, it is believed **Subject Phone 1** is evidence of and/or contain evidence of the Enumerated Offenses, which have been committed. It is likely that **WISE** utilized these cellular devices to contact Weathersby and other co-conspirators regarding the sale of butyryl fentanyl. As such, I believe that the Subject Property

described above contains evidence of the Enumerated Offenses, which have been committed by **WISE** and others.

20. Based on your Affiant's knowledge and training and the experience of other Agents with whom I have discussed this investigation, I know that in order to completely and accurately retrieve data maintained in cellular telephones hardware or software, to ensure the accuracy and completeness of such data, and to prevent the loss of the data either from accidental or intentional destruction, it is often necessary that the cellular telephones, related instructions in the form of manuals and notes, as well as the software utilized to operate such a device, be seized and subsequently processed by a qualified specialist in a laboratory setting.

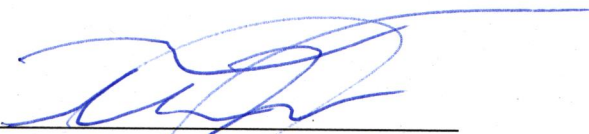
ANALYSIS OF ELECTRONIC DATA

21. The search warrant applied for would authorize the seizure of electronic storage media or, potentially, the copying of electronically stored information, all under Rule 41(e)(2)(B) of the Federal Rules of Criminal Procedure.

22. Searching the cellular telephones for the evidence described above may require a range of data analysis techniques. In some cases, it is possible for Agents to conduct carefully targeted searches that can locate evidence without requiring a time-consuming manual search through unrelated materials that may be commingled with criminal evidence. For example, Agents may be able to execute a "keyword" search that searches through the files stored in a cellular telephone for special words that are likely to appear only in the materials covered in the warrant by looking for particular directory or file names. In other

cases, however, such techniques may not yield the evidence described in the warrant. Suspected criminals have the ability to mislabel or hide information and directories; encode communications to avoid using key words, attempt to delete files to evade detection; or take other steps designed to frustrate law enforcement searches for information. These steps may require Agents to conduct more extensive searches, such as scanning areas of the device's memory not allocated to listed files, or opening every file and scanning its contents briefly to determine whether it falls within the scope of the warrant. In light of these difficulties, your Affiant requests permission to use whatever data analysis techniques appear necessary to locate and retrieve the evidence described above.

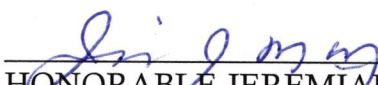
WHEREFORE, based upon the foregoing, your Affiant submits that there is probable cause to believe that the **Subject Phone 1** is evidence of, and/or contains evidence of the Enumerated Offenses, and/or evidence of other co-conspirators involved in the Enumerated Offenses, which have been and continue to be committed.



THOMAS V. WEIS
Special Agent
Federal Bureau of Investigation

Sworn to before me

this 16th day of January, 2018.



HONORABLE JEREMIAH J. MCCARTHY
United States Magistrate Judge